



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF NASHUA SCHOOL DISTRICT #42

Petitioner

v.

NASHUA TEACHERS' UNION

Respondent

CASE NO. T-0244:6

DECISION NO. 87-66

APPEARANCES

Representing the School District:

Steve Bolton, Esq., Counsel
Berard Masse, Superintendent
Jane Bangert, Director of Personnel
Steven McClure, Principal

Representing the Teachers Union:

Emmanuel Krasner, Esq.
Agnes R. Lylis, Teacher

BACKGROUND

The City of Nashua, School District #42 (District), filed an unfair labor practice complaint against the Nashua Teacher's Union (Union) alleging that the Union's request for review of the District's decision to non-renew a non-tenured teacher's contract is not a grievable matter under the contract. The District sought a Cease & Desist order preventing the Union from going to arbitration.

The Union states that Ms. Lylis' evaluations were excellent but she was not to be recommended for reemployment based on the number of sick days taken; number taken not in excess of or equal to the number of sick days allowed under the collective bargaining agreement. The Union further alleged that the District non-renewed Ms. Lylis for exercising her right granted by agreement, thereby creating a breach of the collective bargaining agreement.

Hearing on the complaint was held in the Board's (PELRB) office in Concord on September 17, 1987 with all parties present.

FINDINGS OF FACT

1. Agnes Lylis was employed by the Nashua School District during the 1985-86 school year as a social studies teacher.
2. Ms. Lylis was notified of her contract non-renewal on March 10, 1986 for the 1986-87 school year.
3. Ms. Lylis was a non-tenured teacher at the time of the notification of non-renewal.
4. Testimony at the hearing indicated that the teaching record of Ms. Lylis was good as evidence by evaluation records submitted in evidence.
5. The letter on non-renomination by the superintendent of schools states in part, as follows "...

My decision is based on the recommendation made by your immediate supervisors who cite serious concerns about your attendance record and its impact on instructional continuity..."

6. Several attempts by Ms. Lylis and the Union had been made to grieve the subject of utilization of sick leave.
7. The number of days of sick leave taken by Ms. Lylis did not exceed the number authorized by the contract.
8. The issue before this Board is not the non-renewal of Ms. Lylis' contract as that issue is clearly covered by RSA 189:14-a "...

Failure to be Renominated or Reelected. Any teacher who has a professional standards certificate from the state board of education and who has taught for one or more years in the same school district shall be notified in writing on or before March 31 if he is not to be renominated or reelected. Any such teacher who has taught for 3 or more years in the same school district and who has been so notified may request in writing within 5 days of receipt of said notice a hearing before the school board and may in said request ask for reasons for failure to be renominated or reelected. The school board, upon receipt of said request, shall provide for a hearing on the request to be held within 15 days. The school board shall issue its decision in writing within 15 days of the close of the hearing..."

but whether Ms. Lylis' non-renomination falls under the Management's Rights clause, Section 13.3 which provides:

The BOARD hereby retains and reserves unto itself, without limitations, all power, rights, authority, duties and responsibilities conferred upon and vested in it by the Law and Constitution of the State of New

Hampshire, and of the Charter of The City of Nashua
. . . to hire, promote, transfer, assign and retain
employees in positions with the District . . .

or whether the use of sick leave is grievable under Section III
of the agreement by and between the parties.

REQUEST FOR FINDINGS OF FACT & RULINGS OF LAW:

9. Finding #1 thru #8 granted
- Finding # 9 - 10 denied
- Finding # 11 - 12 - 13 granted
- Finding # 14 granted in part & denied in part
- Finding # 15 & 16 denied
- Finding # 17 - 18 - 19 granted
- Finding # 20 - 21 denied

DECISION & ORDER

The issue is whether the utilization of sick leave by Ms. Lylis is grievable.

After considering all the testimony both written and oral, the Board finds:

- I. The issue to be grievable and orders the parties to proceed to arbitration in accordance with Article III of the collective bargaining agreement.
- II. The unfair labor practice complaint filed by the City of Nashua, School District #42, is hereby dismissed.

Signed this 30th day of November, 1987.



EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard E. Molan and Seymour Osman present and voting. Also present, Executive Director, Evelyn C. LeBrun.